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Consumer Federation of America

April 11, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: EX PARTE -- CC Docket No. 01-9: Application of Verizon Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide InterLATA Services in Massachusetts

In the course of our discussion of the Verizon Massachusetts application, I mentioned that I had recommended a modification in the process of reviewing section 271 applications that would give the Commission greater flexibility and streamline the process. I advocated this in both the Bell Atlantic – New York (CC Docket NO. 99-295) and the SBC – Texas (CC Docket No. 00-4) applications. I called these compliance proceedings and described the approach in greatest detail in regard to SBC. The relevant language is reproduced below.

OVERALL RECOMMENDATION: A LITTLE MORE WORK NEEDS TO BE DONE

In commenting on the Bell Atlantic New York section 271 application, CFA used a football analogy. Bell Atlantic had carried the ball down to the goal line and fumbled. One referee, the New York Public Service Commission, said that it had had crossed the goal line. The second referee, the Department of Justice, said that it did not think that it had done so, but it did recognize how, looking at the play from another angle, the other referee could reach a different conclusion. Ultimately, the Federal Communications Commissions concluded that it had crossed the goal.

We can use a similar analogy in the case of the SBC application in Texas, but the location on the playing field is different. The Texas Public Utility Commission says that SBC scored a touchdown. The Department of Justice says that they stepped out on the five yard line and another play is definitely necessary.

We believe that the SBC application is significantly different than the New York application. It requires a much clearer demonstration of the ability of SBC to deliver parity to competitors for several reasons. At the same time, tremendous progress has been made in Texas. It is obvious that SBC and the Texas PUC have moved 95 yards and they should not have to go over that ground again. SBC should be required only to demonstrate compliance

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in specific areas in which the FCC finds deficiencies. This can be done on a fast track in a compliance proceeding.

CREATING A PROCESS FOR EXPEDITED COMPLIANCE PROCEEDINGS

The FCC's policy decision three years ago to evaluate applications on a take it or leave it basis with no modifications or updates made perfectly good sense when so many issues had to be addressed. However, over the course of three years the companies and state PUCs have gained a great deal of experience. With concerns narrowing and focusing on specific issues, it now makes sense to decide, definitely, all the issues that have been laid to rest and focus the attention of regulators, competitors and companies on the few outstanding problems. By writing an order in this proceeding that establishes this process for resolving issues, the application process will flow more smoothly.

Such a compliance proceeding should be ordered only in the case where the Commission concludes that Sections 271 (c) (1) and 272 have been met. Compliance deals only with Section 271 (c) (2), but the Commission cannot find that entry is in the public interest until the market is irreversibly open. Therefore, the Public Interest Finding must await the final resolution of compliance issues. The Commission should, however, not embark upon a compliance proceeding unless it is convinced, but that in all other aspects, entry is in the public interest. To put the matter simply, the compliance proceeding says " fix these problems and entry will be granted." We believe that the Texas application has arrived at that point.

In a complex industry such as telecommunications where companies that are competing must also cooperate because of the interconnected nature of the network, we believe it is only practical to narrow issues in this way and focus attention on key problems. The Commission correctly adopted it rule on no changes to the application after amendment because the Regional Bell Operating Companies were filing clearly deficient applications with so many unresolved issues that it was difficult, under the time frame to deal with "negotiations" about so many matters. SBC was a leader in creating the problem.

The industry and the process have matured past that point. Instead of simple all or nothing decisions, it is now time to institute a process that allows the parties to work actively on solutions at the federal level, just as they have on the state level. State and federal legislators conduct such discussions all the time. It is preferable to set them on a formal footing.

In accordance with section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, an original and one copy of this Notice are being filed with your office. In addition, a copy of this Notice and attachments is being transmitted by fax to Ann Berkowitz at Verizon as requested in the Commission's Public Notice.

Sincerely,

Mark Cooper